IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.970 OF 2004

Smt.Malati Shankar Mhatre ...Appellant

Vs.

Manohar Damodar Patil & Ors. ...Respondents

Mr.C.G.Gavnekar for the Appellant
Mr.A.K.Abhyankar with Smita Mhatre for Respondents.

CORAM: A.S.OKA, J.

DATED: JANUARY 17, 2005.

P.C.:

1. Heard Mr.Gavnekar for the Appellant.

2. By the impugned order the application made by the Appellant for interim injunction is rejected by the Trial Court. The Appellant claims to be in possession and seeks to protect her possession by order of temporary injunction.

3. The Trial Court has rejected the application after considering the fact that though the Appellant claims to be in possession from the year 1966 upto the year 2004 the 7/12 extract do not show entry of the name of the Appellant. On the contrary the 7/12 extracts from the year 1957 to 2004 show that Defendant Nos.1 to 7 to be in possession and in the year 2004 name of original Defendant No.8 has been mutated.

The Trial Court has also considered the fact that though the Appellant claims to be paying land revenue in respect of the the suit land, the receipt of the land revenue produced by the Appellant is only of the year 2001. The learned Trial Judge has also noted that in respect of another land, the Appellant filed proceedings for obtaining declaration under Bombay Tenancy and Agricultural Land Act,1948 and no proceedings were initiated by the Appellant in respect of the suit land.

4. After considering all the factors, the learned Trial Judge has declined to grant discretionary relief of temporary injunction. In an Appeal against such discretionary order, no interference is called for unless it is shown that discretionary power has been arbitrarily exercised. I find that, prima facie, the findings recorded by the Trial Court are based on documentary evidence on record. No interference is called for with the impugned order.

5. Appeal is dismissed with no order as to costs.

6. It is made clear that the findings recorded by the Trial Court are the tentative findings which are recorded for limited purpose of deciding the prayer for interim relief and the said findings are obviously not binding on the Trial Court at the time of final hearing of the suit.

Judge.